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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re
CRESTLLOYD, LLC,

Debtor in Possession.

Case No. 2:21-bk-18205-DS
Chapter 11

**OPPOSITION TO MOTION TO
APPROVE AUCTION AND BID
PROCEDURES REGARDING THE SALE
OF REAL PROPERTY**

Date: January 6, 2022
Time: 11:30 a.m.
Crtrm.: 1639

**TO THE HONORABLE DEBORAH SALTZMAN, UNITED STATES BANKRUPTCY
JUDGE, CRESTLLOYD, LLC, AND ALL OTHER PARTIES IN INTEREST:**

Inferno Investment, Inc. ("Inferno"), the holder of a deed of trust in second priority against the real property located at 944 Airole Way, Los Angeles, CA 90077 (the "Property"), objects to the bid procedures proposed by Crestlloyd, LLC (the "Debtor"), to the extent that they propose an auction without a reserve and a buyer's premium that is artificially high and which may chill bidding.

Inferno understands that auctions are often done without a reserve because it is believed to increase interest in the property being sold and, therefore, to generate a higher sale price. The problem is that this is not a typical auction where the winner has an absolute right to purchase the property at the conclusion of the auction. Instead, the Property is simultaneously being listed at \$295 million and, after the auction and in order

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1 to convey title to the Property free and clear of liens, the Debtor must return to the Court
2 for approval of the sale of the Property to the winning bidder. In order to sell the Property
3 free and clear of liens, certain requirements must be met. As relevant here, a property
4 can be sold free and clear of liens where the price at which the property is to be sold
5 exceeds the aggregate value of the liens against the Property, the lienholders consent, or
6 the lien is in bona fide dispute. See 11 U.S.C. § 363(f). Inferno is not aware of any basis
7 on which the Debtor could contest its lien, and it does not anticipate consenting to a sale
8 of the Property for an amount that is not enough to pay its lien in full. Thus, the only way
9 for the Debtor to sell the Property free and clear of liens is if the sale price is sufficient to
10 pay all of the liens in full. By the Debtor's estimates, this would require a reserve of
11 approximately \$191.2 million.¹ It would be a waste of everyone's time for the Debtor to
12 submit a winning bid to the Court that is in an amount that is not sufficient to do this.
13 Moreover, the Debtor states that it believes that the Property may be worth \$325 million
14 and that its purpose in filing this case was to preserve the equity for the Debtor. In this
15 context, it makes significantly more sense to set a reserve that is equal, at a minimum, to
16 the liens against the Property.

17 It also makes sense because the parties who will be bidding at the auction are
18 likely to be savvy buyers who will understand that the winning bid must still be submitted
19 to the Court and may not be approved if the purchase price is not high enough to pay off
20 the liens against the Property. Thus, the psychological benefit of conducting an auction
21 with no reserve is not present here.

22 Inferno is also concerned about the amount of the buyer's premium. Although the
23 bid procedures state that it is 12%, it is actually significantly less because Concierge
24 Auctions has agreed to "rebate" the majority of the premium to the Debtor's bankruptcy
25

26 _____
27 ¹ The Debtor states in its bid procedures motion that the total secured claims as of the petition date were
28 approximately \$179.2 million, plus a \$12 million postpetition DIP loan that is drawn down. Inferno does not
take a position on the validity, amount, or priority of the other liens against the Property in connection with
this Opposition and reserves all rights in that regard.

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1 estate. Depending on the sale price, the amount of this rebate ranges from 8.5% to 9.5%
2 of the buyer's premium. It thus is not meant to compensate the auctioneer for its efforts
3 and Inferno is concerned that given the value of the Property, adding a 12% "buyer's
4 premium" to the winning bid may chill bidding and drive the price down, not up.

5 Last, given the interest of the lienholders in the success of the auction and to the
6 extent that the Court approves bid procedures, Inferno requests that the Debtor keep the
7 lienholders apprised of the number of bidders who register and provide proof of sufficient
8 funds and therefore qualify to submit bids on the property.

9 Accordingly, Inferno objects to the bid procedures as proposed and believes that it
10 would be appropriate to condition the approval of the bid procedures on the
11 establishment of a reserve in an amount sufficient to pay all of the liens in full and on a
12 reduction of the buyer's premium to the amount actually being paid to Concierge
13 Auctions.

14
15 DATED: January 5, 2022

Respectfully submitted,

SMILEY WANG-EKVALL, LLP

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18 By: /s/ Kyra E. Andrassy

19 KYRA E. ANDRASSY

20 Attorneys for Inferno Investment, Inc.
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
3200 Park Center Drive, Suite 250, Costa Mesa, CA. 92626

A true and correct copy of the foregoing document entitled (*specify*): **Opposition to Motion to Approve Auction and Bid Procedures Regarding the Sale of Real Property** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **1/5/2022**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:

On (*date*) , I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) , I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

1/5/2022
Date

Lynnette Garrett
Printed Name

/s/ Lynnette Garrett
Signature

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